

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING)	
PHARMACY PRODUCTS)	
LIABILITY LITIGATION)	MDL No. 1:13-md-2419-FDS
)	
This Document Relates to:)	Judge F. Dennis Saylor IV
)	
All Cases)	

AMERIDOSE, LLC'S BRIEF IN OPPOSITION TO THE ST. THOMAS ENTITIES'
MOTION FOR ENTRY OF A SECOND AMENDED PROTECTIVE ORDER

On November 25, 2013 The St. Thomas entities moved the Court for an order amending the existing Protective Order (Docket #594). That Motion should be denied, at least in part.

The original Stipulated Protective Order of Confidentiality in this case was entered on July 12, 2013 (Docket #280). On Aug. 16, 2013 the parties filed an Amended Stipulated Protective Order of Confidentiality (Docket #397), which was approved and entered. The St. Thomas entities now stand before the Court on their Motion to amend that document (Docket #594). The original protective order was the result of negotiations between the PSC and what has more recently been dubbed the "affiliated defendants." Over time another faction has emerged, called the "non-affiliated defendants." Since that group has no designated leadership or liaison committee, the meet and confer negotiations has become fractured.

The proposed protective order attached to the St. Thomas Entities' Motion makes changes to ten pages of the 22 page document. (See redlined version, St. Thomas exhibit D 1.)

There are proposals at two pages which are clearly a bad idea for Ameridose and probably the remainder of the affiliated defendants:

- Page 7, paragraph D(iv): This should not be implemented because it is dangerously inconsistent with subparagraph (iii). Sub-paragraph iii permits “all” counsel “working on behalf of any defendant” to receive Confidential Material. Sub-paragraph iv then conforms, extending the protection to the staffs of such lawyers. The St. Thomas proposal is a drastic departure because it excludes the possibility of non-lawyers who may be working for a defendant on matters tangentially related to “this Litigation or the Bankruptcy Proceedings,” as opposed to working directly on “this Litigation or the Bankruptcy Proceedings.” Many of the defendants, affiliated with NECC or not, may have lawyers working on regulatory, transactional or other issues which may require those lawyers and their paralegals or assistants to see confidential material in order to properly execute their duties. As it stands now the Protective Order permits such delegation of work. There is no rational reason to allow lawyers in that position to see confidential information, but their paralegals and assistants to be excluded.
- Page 8, paragraph E(v). This has the same fatal flaw discussed above.

The St. Thomas entities filed a Memorandum in Support of their various motions, including their Motion for a Second Amended Protective Order. (See docket #596, filed November 25, 2013.) Section III, beginning at page 8 addresses the amendment of the Protective Order. While it makes specific arguments in support of certain portions of its proposed new Protective Order (e.g. deposition designations), they provide absolutely no rationale for their proposal regarding paragraph D(iv) at page seven or E(v) at page eight. Any fears of drawing the confidential circle too broadly are unwarranted. The change proposed by St. Thomas entities will potentially work a serious hardship on certain affiliated defendants. Those changes should be rejected.

Respectfully submitted,

/s/ Matthew P. Moriarty

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed with the Clerk of the Court on December 9, 2013 using the ECF system that sent notification of this filing to all ECF-registered counsel of record via e-mail generated by the Court's ECF system.

/s/ Matthew P. Moriarty

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